

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHANNON WESTBROOK,

Plaintiff,

v.

DR. STEVE HAMMOND, PAC ED LOPEZ,
KATHY RENINGER, and JOHN AND
JANE DOE,

Defendants.

No. C10-5392 BHS/KLS

ORDER DENYING MOTION FOR THE
APPOINTMENT OF COUNSEL

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the court is Plaintiff's motion for the appointment of counsel. ECF No. 19. Having carefully reviewed Plaintiff's motion, and balance of the record, the court finds, for the reasons stated below, that Plaintiff's motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional

1 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
2 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
3 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
4 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
5 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
6 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
7 1101, 1103 (9th Cir. 2004).

8
9 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
10 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
11 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
12 facts during litigation. But, if all that was required to establish the complexity of the relevant
13 issues was a demonstration of the need for development of further facts, then practically all cases
14 would involve complex legal issues. *Id.*

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16 Plaintiff requests counsel because he is not able to afford counsel on his own, he has
17 made every effort to obtain counsel, the issues involved in this case are complex, there is no law
18 library at his facility, he has limited knowledge of the law, and that he is being assisted by a
19 fellow inmate. ECF No. 19, p. 2.

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21 Plaintiff filed his complaint *pro se* and has demonstrated an adequate ability to articulate
22 his claims *pro se*. The pleadings on file demonstrate that Plaintiff is familiar with the Court
23 rules as well as the law pertaining to his claims. Contrary to Plaintiff’s belief, this is not a
24 complex case. Plaintiff claims that he was denied adequate medical care when the medical Care
25 Review Committee decided that surgical intervention was not medically necessary for his right
26 bicep tear. This case does not involve complex facts or law.

1 Plaintiff also claims that he has not access to a law library. According to Defendants, if
2 Plaintiff requires the use of a law library, he has access to one at another DOC facility and can
3 request a transfer.

4 Finally, Plaintiff states without evidence that Defendants have failed to provide him with
5 proper medical treatment for his condition. This is insufficient to show that he is likely to prevail
6 on the merits of his case.

7
8 The court finds no exceptional circumstances in this case. While Plaintiff may not have
9 vast resources or legal training, he meets the threshold for a *pro se* litigant. Concerns regarding
10 investigation and discovery are also not exceptional factors, but are the type of difficulties
11 encountered by many *pro se* litigants. There are also numerous avenues of discovery available to
12 the parties through the Federal Rules of Civil Procedure during the litigation process.
13 Moreover, Plaintiff has not shown a likelihood of success on the merits.

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15 Accordingly, Plaintiff's motion to appoint counsel (ECF No. 19) is **DENIED**. The Clerk
16 is directed to send copies of this Order to Plaintiff.

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18 **DATED** this 16th day of March, 2011.

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21 Karen L. Strombom
22 United States Magistrate Judge
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